

Balvir Kaur Vs. Kala

Balvir Kaur Vs. Kala

SooperKanoon Citation : sooperkanoon.com/1066995

Court : Punjab and Haryana

Decided On : Jan-15-2013

Appellant : Balvir Kaur

Respondent : Kala

Judgement :

In the High Court of Punjab and Haryana, at Chandigarh Criminal Misc.

not A-860-MA of 2011 (O&M) Date of Decision:

15. 1.2013 Balvir Kaur ..Applicant Versus Kala ..Respondent CORAM: Hon'ble Mr.Justice Jasbir Singh.

Hon'ble Mr.Justice Inderjit Singh Present: Mr.G.L.Bajaj, Advocate for the applicant.

Jasbir Singh, Judge This application has been filed under Section 378(4) Cr.P.C.seeking leave to file an appeal against judgment of acquittal dated 12.11.2010 vide which a criminal complaint, filed by the applicant, was dismissed.

In the said complaint, it was alleged against the respondent that he had committed rape upon the applicant on 7.2.2006 against her consent.

The complaint was filed on 17.2.2006.

The trial Judge has noted the following facts regarding case of the complainant:- that accused Kala is the Sarpanch of village Koer Singh Wala.

It is further alleged that about six months back at about 8 A.M.the accused came to the house of the complainant.

At that time her father-in-law, namely Harbans Singh, her husband, namely, Gurjant Singh and cousin brother of her Criminal Misc.

not A-860-MA of 2011 (O&M) 2 husband, namely, Jagmeet Singh were in the house.

Accused has stated in the presence of these persons that he will keep the complainant as safai sewak in the school of the village if they pay Rs.7000/-.

Her father-in-law and her husband agreed with the suggestion of the accused and gave Rs.7000/- to him.

Accused told that Balvir Kaur should join the school today.

It is further pleaded that Balvir Kaur worked in the school of the village for two months.

Accused gave Rs.600/- as her salary for one month and promised to pay the salary of another month.

Thereafter husband and father-in-law of the complainant demanding the salary of another month from the accused but he had been putting the matter on one pretext or the other.

It is further alleged that the accused turned out the complainant from the job for want of funds with the panchayat and told that she will again be employed as and when funds will come.

It is further alleged that on 7.2.2006 at about 8 A.M.accused came to the house of the complainant and at that time, complainant, her husband and her father-in-law were present.

He stated that he would take Balvir Kaur to Guruharsahai and after getting permission from the higher officeRs.he would again keep Balvir Kaur as safai

sewak in the school.

Her husband and her father in law permitted her to go with the accused at Guruharsahai in his car but he did not meet any officer at Guruharsahai.

At about 7 P.M.when they were returning, the accused stopped his car near seepage Criminal Misc.

not A-860-MA of 2011 (O&M) 3 drain and committed rape upon her.

In the meanwhile her husband, her father in law and cousin brother Jagmeet Singh reached there on motorcycle in search of the complainant.

They on hearing raula of the complainant reached near the car, where her husband and Jagmeet Singh saw that the accused was committing rape upon the complainant and they released the complainant from the clutches of the accused.

Thereafter, they visited police station Mamdot and reported the matter to the police and the police assured that they will take action against the accused but they did not take any action against the accused.

When no action was taken by the police against the above respondent,a criminal complaint was filed in the Court.

The applicant/complainant led preliminary evidence and vide order dated 2.7.2009, the respondent was summoned to face trial for commission of offences under Section 376 & 420 IPC.

On appearance of the respondent, copies of the documents were supplied to him, as per norMs.Vide order dated 21.4.2010, the case was committed to the competent Court for trial.

The respondent/accused was charge sheeted to which he pleaded not guilty and claimed trial.

The prosecution produced two witnesses and also brought documentary evidence, to prove its case.

On conclusion of the prosecution evidence, statement of the accused/respondent was recorded under Section 313 Cr.P.C. Incriminating circumstances appearing against the respondent/accused were put to him which he Criminal Misc.

not A-860-MA of 2011 (O&M) 4 denied, claimed innocence and pleaded false implication.

It was specifically stated that the complaint was the result of strained relations between the parties.

However, he led no evidence in defence.

The trial Judge, on appraisal of evidence, found case of prosecution doubtful and accordingly the accused/respondent was acquitted of the charges framed against him.

As per admitted facts, the complainant failed to get her medical examination.

No injury was found to have been suffered by her at the time of alleged occurrence.

The trial Judge thrashed the entire evidence in a threadbare manner and while giving benefit of doubt to the respondent/accused, it was observed as under:- 18.

The present complaint was filed on 17.2.2006 and in para No.4 the occurrence has been shown as 7.2.2006 According to the prosecutrix herself who appeared in the witness box as PW1 she has not mentioned any date of the alleged occurrence.

She has stated that accused took her in the car and they started at 10 AM from there and he took her to Guruharsahai but never took her before any officer.

She was with the accused for whole day and came back at about 7 P.M. and before reaching the house about a distance of 30 acres he stopped the car and drove it towards seepage drain.

She raised hue and cry.

The accused broke the string of her salwar and committed bad thing with her.

No doubt she has stated that the accused had committed bad thing with her but she has not specifically stated that she was raped by the Criminal Misc.

not A-860-MA of 2011 (O&M) 5 accused.

It has been clearly held by Hon'ble Supreme Court in 2009(1) R.C.R.(Criminal) 310 (Rajoo & others versus State of M.P.) (supra) that statement of prosecutrix should be evaluated as par with that of injured witness who will not tell a lie but it can never be presumed that her statement is a gospel truth.

No medico legal examination was got conducted by the prosecutrix.

There is no document on the file which can show that she ever went to the police station to file complaint against the accused regarding the alleged rape by the accused.

It is not possible for a man to commit rape with a woman against her wishes if woman resist there is every chance that she should have suffered even some minor injuries.

In this case there is not an iota of evidence which can show that she has suffered any injury.

Even she has not suffered scratch on her entire body.

It has been clearly held by our own Hon'ble High Court in 2009(3) R.C.R.(Criminal) 480 (Kishan versus State of Haryana where there was absolutely no resistance on the part of prosecutrix and there was no semen on the clothes of the prosecutrix so the accused acquitted as the occurrence which is alleged by her did not take place as deposed by her.

It has been again held by Hon'ble Supreme Court in 2009(4) R.C.R.(Criminal) 345 (Tameezuddin @ Tammu versus State of (NCT) of Delhi) (supra) that where there was no injury on the person of Criminal Misc.

not A-860-MA of 2011 (O&M) 6 prosecutrix and as per medical report there was no evidence to suggest the commission of rape, accused has been acquitted.

As already stated above in this case there is no injury found on the prosecutrix.

In the present case Balbir Kaur is 35 years old and she could have easily resisted the accused of committing rape upon her.

There is no document on the file which can show that she ever got job in the school.

19. According to the complaint itself both the accused and the prosecutrix known to each other and according to the prosecutrix she remained with the accused from 10 A.M.to 7 P.M.in the car and she could have easily raised hue and cry and got down from the car.

In the cross-examination she has stated that they moved an application to the police and copy of the application was given by her to her counsel but strangely enough this application was a material piece of evidence but no such application has been placed by the complainant on the file.

In the cross-examination she has stated that litigation remained pending between their family and the family of Kala Singh but she has stated that compromise was effected.

When there was litigation between the parties pending before filing the present complaint, so there was no occasion for the prosecutrix to travel with the accused in his car and that too alone for the whole day.

In the cross-examination she herself stated that she never got herself medically examined.

It is not possible for a man to Criminal Misc.

not A-860-MA of 2011 (O&M) 7 commit rape with a woman who is 35 years of age and that too against her wishes on the back seat of the car.

It has been clearly held by our own Hon'ble High Court in 2010(3) Criminal Court Cases 920 (P&H) (Dharamender and others versus State of Haryana) (supra) that where prosecutrix did not resist, no injury on the person of the prosecutrix found in medical examination.

Prosecutrix had knowledge and capacity of having full import of what she was doing.

Conviction was set aside.

Learned counsel for the prosecutrix has relied upon 2000(2) R.C.R.(Criminal) 471 (State of Rajasthan versus N.K.) where it was held by Hon'ble Supreme Court that there is no rule that her testimony cannot be acted upon without corroboration in material particulars. There is no doubt that statement of prosecutrix can be relied upon but the circumstances and the evidence must suggest that rape was committed upon the prosecutrix.

It was also found, as a matter of fact, that there was an old existing enmity between the parties.

Taking note of above fact, it was observed that the applicant/complainant would not have travelled with the respondent/accused, as alleged.

There was nothing on record that any application was moved before the police stating about the occurrence in question.

It was also not found that the respondent/accused got the prosecutrix employed in a school, as alleged.

The complaint filed by the applicant was found to be fabricated.

Their Lordships of the Supreme Court in Allarakha Criminal Misc.

not A-860-MA of 2011 (O&M) 8 K.Mansuri v.

State of Gujarat, 2002(1) RCR (Criminal) 748, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the

Court.

A Division Bench of this Court in *State of Punjab v.*

Hansa Singh, 2001(1) RCR (Criminal) 775, while dealing with an appeal against acquittal, has opined as under:- We are of the opinion that the matter would have to be examined in the light of the observations of the Honble Supreme Court in *Ashok Kumar v.*

State of Rajasthan, 1991(1) SCC 166. which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

Similarly, in *State of Goa v.*

Sanjay Thakran (2007) 3 SCC 75. and in *Chandrappa v.*

State of Karnataka, (2007) 4 SCC 415. it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

In *Mrinal Das & others v.*

The State of Tripura, 2011(9) SCC 479. decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameters in which interference can be made in a judgment of acquittal, by observing as under: An order of acquittal is to be interfered with only when there are compelling and substantial reasons., for doing so.

If the Criminal Misc.

not A-860-MA of 2011 (O&M) 9 order is clearly unreasonable., it is a compelling reason for interference.

When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts

etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

Similarly, in the case of *State of Rajasthan v.*

Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602, the Honble Supreme Court has observed as under:- 7.

A judgment of acquittal has the obvious consequence of granting freedom to the accused.

This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence.

A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons.

An appeal against Criminal Misc.

not A-860-MA of 2011 (O&M) 10 acquittal has always been differentiated from a normal appeal against conviction.

Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:- 10.

There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other.

The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with.

Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction.

The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the Criminal Misc.

not A-860-MA of 2011 (O&M) 11 ends of justice so require and it is essential to appease the judicial conscience.

Counsel for the applicant has failed to indicate any error in passing the judgment on the part of the trial Court which may necessitate interference by this Court.

This application is also barred by 222 days in filing.

No ground is made out to condone the delay in filing the application as well.

Hence, both the applications viz.

Criminal Misc.

not A-860-MA of 2011 and Criminal Misc.

No.53971 of 2011 are dismissed.

(Jasbir Singh) Judge (Inderjit Singh) Judge January 15, 2013 DK.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com